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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,313	10/24/2001	Kenneth Alley	ALLE-P3.1-US	2976

21616 7590 07/10/2003

LAW OFFICES OF MARK A. GARZIA, P.C.
P.O. BOX 288
MEDIA, PA 19063

EXAMINER

RAEVIS, ROBERT R

ART UNIT PAPER NUMBER

2856

DATE MAILED: 07/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/002,313

Applicant(s)

ALLEY, KENNETH

Examiner

Robert R. Raevis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-7, 14, 15, 21-27 and 29-31 is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-13, 16-20 and 28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other:

DETAILED ACTION

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: rails 120 (page 17, line 2 from last), ears 37 (page 19, line 11 from bottom). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. Claims 1-4, 8-13, 16-20 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claims 1, 9, 10, 12; "the inlets" lack antecedent basis.

As to claim 8; "the test strip" and "multi-layered test strip" lack antecedent basis.

As claim 10; is "a cassette" a second cassette, or is the same cassette improperly claimed twice? Also, the claim is grammatically incorrect.

As to claim 12; "the windows" lack antecedent basis.

As to claims 13, 16, 17; "designed" how?

As to claim 13; "isolator assembly" lacks antecedent basis.

As to claim 28; "the test cassette" lacks antecedent basis.

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ryan et al teach a tube/shaft 24 within a container 22 and closure 50 to sample liquid from the container; but the closure does not include/have the tube/shaft 24 as claimed in claims 1, 5, 14 and 27.

Seidler et al's container includes a lid and test strip 25 ; but the lid does not include/have the tube/shaft as claimed in claims 1, 5, 14 and 27.

Sayles teaches a container with a test strip; but the lid does not include/have a tube/shaft as claimed in claims 1, 5, 14 and 27.

Dorn et al teach a container having a closure 14 with hollow shaft 28, the shaft having an inlet 22, 24, and a plug 26; however, Dorn does not suggest a plug cover that both has a window and seals off inlets (as claimed in claim 1), does not incorporate a (rotatable) test cassette (as claimed in claim 5), does not form a seal between the bottom (of element 40 of Figure 5) and tube 28 that results in "isolating" at least of the liquid in the container 16 from the container 12 as there is always an open passage 44, 22 between the two during tube 28 and element 40 contact (as claimed in claim 14), and does not teach a tube 28/ tube-isolator (tube portion immediately below septum 26) that closes a window in the isolator bottom for isolating a portion of liquid in the tube from liquid in the container when the closure communicates with the container bottom via the tube/isolator (as claimed in claim 27).

Guirguis teaches a combination container 22 and closure 62/ tube 25 assembly; however, Guirguis does not suggest a plug cover that has a window and seals off inlets (as claimed in claim 1), does not incorporate a (rotatable) test cassette (as claimed in claim 5), does not does not form a seal between the tube 25 and container bottom to

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isolate liquid in the container 22 from the tube 50, and does not teach a tube 25/tube-isolator that closes a window in the isolator bottom for isolating a portion of liquid in the tube from liquid in the container when the closure communicates with the container bottom via the tube/isolator (as claimed in claim 27).

4. As to claim 1; note was made of the combination of the subject matter of the last line ("a plug ... the inlets") in combination with remaining claim limitations.

As to claim 5; note was made of the combination of the combination of the last 5 lines ("a test cassette ... permitting *rotational* movement of the test cassettes ... shaft" (italics added)) with remaining claim limitations.

As to claim 14; note was made of the combination of the combination of the phrase "said tube having means to engage ... ultimately forming a *seal* with the isolator bottom for storing and *isolating* ... within said inner container" (italics added, last 4 lines of the claim) with remaining claim limitations.

As to claim 27; note was made of the combination of the last 5 lines of this claim with remaining claim limitations.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 703-305-4919. The examiner can normally be reached on Monday to Friday from 6:30am to 4:00pm. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7722.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4900.

Row
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PRIMARY